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No. 627

In the Supreme Court of the United States

OCTOBER TERM, 1950

PACIFIC EMPLOYERS INSURANCE COMPANY, PETITIONER

v.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA, EVERT E. THOMAS, SUE CALAHAN AND DAN CALAHAN, A/K/A CALAHAN, DECEASED, JOE CALAHAN, AND [illegible] AS ADMINISTRATRIX, V. THOMAS, AND THE VETERANS ADMINISTRATION OF THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

BRIEF FOR THE VETERANS ADMINISTRATION IN OPPOSITION

[illegible]

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In the Supreme Court of the United States

OCTOBER TERM, 1958

No. 636

PACIFIC EMPLOYERS INSURANCE COMPANY, PETITIONER

v.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA, DICK R. THOMAS, JOE CALABRESE AND DAN CALABRESE, D/B/A CALABRESE TRUCKING, JOE CALABRESE AND DAN CALABRESE AS INDIVIDUALS, Y. THOMAS, AND THE VETERANS ADMINISTRATION OF THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

BRIEF FOR THE VETERANS ADMINISTRATION IN OPPOSITION

OPINIONS BELOW

The final order and decision[1] of the California Industrial Accident Commission (App.,[2] pp. v–x) is apparently not reported. The order of the California District Court of Appeal, Fourth Appellate District (App. B), denying the petitioner's petition for writ

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[1] The original order and decision entered on December 31, 1957, insofar as the award to the Veterans Administration is concerned, is identical with that on petition for reconsideration, included in the petitioner's appendix at pages v–x.

[2] "App." references are to the appendices to the petition.

of review from the Commission's award, was entered without opinion. The order of the California Supreme Court[3] (App. A) denying the petitioner's application for hearing was also entered without opinion.

JURISDICTION

The order of the Supreme Court of California denying the petitioner's application for a hearing was entered on October 15, 1958 (Pet. 5). The petition for a writ of certiorari was filed on January 9, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1257.

QUESTION PRESENTED

Whether the Veterans Administration is entitled to be reimbursed under a state workmen's compensation statute for its hospitalization and medical costs in treating an injured workman.

STATUTES AND REGULATIONS INVOLVED

The applicable legislation and regulations are set forth in Appendices D through G to the petition (App., pp. xi–xv).

STATEMENT

This action was originally brought before the California Industrial Accident Commission by Dick R. Thomas for appropriate workmen's compensation benefits for injuries sustained while in the employ of respondent Calabrese. The petitioner was the employer's compensation insurance carrier at the time in question.

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[3] This order was entered on October 15, 1958 (Pet. 5), not August 22, 1958, as indicated in petitioner's Appendix A.

During these proceedings a lien was filed by the Veterans Administration for medical and hospitalization costs incurred by the VA in treating Thomas for his work injuries. After the proceedings were concluded, an award was made by the California Industrial Accident Commission establishing, *inter alia*, that Thomas was entitled to recover from the petitioner for self-procured medical and hospitalization services subject to the lien of the Veterans Administration which had provided the services and borne the actual costs thereof (App., p. ix).[4]

The undisputed facts concerning the claim of the United States may be briefly stated:

After Thomas' injury—which was held by the Commission to have been incurred in employment covered by the insurance policy issued by petitioner—he was admitted to the Veterans Hospital in Fresno, California, and later transferred to the Veterans Hospital in Long Beach, California. The petitioner does not contend here, nor did it in any of the proceedings below, that the lien submitted by the Veterans Administration for costs in treating Thomas represents an unreasonable charge for the services rendered. Neither does the petitioner challenge the fact that those services were reasonably required to cure Thomas and that Thomas' employer had failed to provide him with the necessary medical attention as required by the California statute (App., p. xv).

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[4] The Commission's award also recognized the lien filed by Thomas' attorney for nursing services paid for by the attorney (App., p. ix). The petitioner does not contest this aspect of the award.

While in the Veterans Hospital, Thomas was required to execute a "Power of Attorney and Agreement" pursuant to the provisions of VA regulation, 38 C.F.R. 17.48(d) (App., pp. xiii–xiv). This regulation provided, in essence, that a veteran, such as Thomas, with a non-service-connected disability would not be furnished hospitalization and medical care without cost to the extent that the veteran was entitled to reimbursement from a third party, and that such veterans should assign any such rights to the Administrator of Veterans' Affairs to cover the reasonable cost of the VA care. Rights specifically covered in 38 C.F.R. 17.48(d) and assigned in the "Power of Attorney" executed pursuant thereto included those arising under workmen's compensation statutes.

The petitioner's objection to the VA award in the proceedings before the Commission was rejected by the Commission on the basis of applicable California legislation making the employer liable for medical costs "incurred by or on behalf of the employee" and authorizing the Commission to allow a lien for reasonable expense "incurred by or on behalf of the injured employee" (Pet. 10–11; App. G). The petitioner's petition for writ of review to the District Court of Appeal, Fourth Appellate District, with regard to the Veterans Administration lien, was denied by that court without opinion (App. B). The subsequent application for hearing in the Supreme Court of California, predicated on the same contentions advanced here, was similarly denied without opinion (App. A).

ARGUMENT

The decision of the California Industrial Accident Commission recognizing the VA lien in this case, sustained by the orders of the California District Court of Appeal and Supreme Court denying review without opinion, is correct in view of the state workmen's compensation legislation providing for reimbursement to those who bear the costs of necessary medical and hospital treatment of an injured employee. The Veterans Administration is entitled, as is any private institution or person who assumes the employer's statutory obligation of caring for the employee, to the remedies afforded by the state workmen's compensation legislation. The decision in California is in accord with the only two other state appellate rulings which have passed on this issue. Moreover, the petitioner's heavy reliance on the decisions of this Court in *United States* v. *Standard Oil Co.*, 332 U.S. 301, and *United States* v. *Gilman*, 347 U.S. 507, is completely misplaced since those decisions in no way impair the full availability to the Government of established remedies provided by statute or the common law. Thus, there is no occasion for further review in this Court.

1. The obligation imposed by the California workmen's compensation legislation with regard to providing necessary medical and hospital care for an injured employee is plain. The employer is to provide such care, and in the event of his failure to do so, "the employer is liable for the reasonable expense incurred by or *on behalf of* the employee in providing treatment"

(emphasis added) (California Labor Code, § 4600, App. G). And in Section 4903 of the Code, the Industrial Accident Commission is authorized to allow a lien against compensation benefits to the extent of "reasonable expense incurred * * * on behalf of the injured employee * * *" (App. G). After Thomas' employer failed to perform its statutory obligation, the United States rendered the requisite services, and in this event, the legislation provided that the employer would be liable for the cost of these services. This liability runs not only to the employee who might incur expense for the necessary treatment, but also directly to those who bear the cost of treatment on the employee's behalf.

In view of these unambiguous provisions, and absent any challenge by the petitioner to the reasonableness of the hospital bill or the necessity for the VA services, the right of the United States to claim reimbursement for its treatment of Thomas is clearly provided. It has long been firmly established that governmental entities are entitled to the same benefits and protections provided by local law as any other persons or organizations. *E.g., Dugan* v. *United States*, 3 Wheat. 172, 181; *Cotton* v. *United States*, 11 How. 229, 231; see also, Sutherland, *Statutory Construction*, Vol. 3, § 6302 (3d ed., 1943). If the VA were denied reimbursement in this situation, the petitioner would avoid a risk, and its insured employer, an obligation, clearly imposed by statute. Such a result would obviously constitute unjust enrichment.

The foregoing considerations have led two other state appellate courts to adopt the conclusions and the

determination of the California Industrial Accident Commission and the California courts in the present litigation. Thus, in *Higley* v. *Schlessman*, 292 P. 2d 411, the Supreme Court of Oklahoma, in circumstances similar to those here, held that the Veterans Administration was entitled to hospital and medical costs in the compensation proceeding "to the same extent as any other private hospital or physician". 292 P. 2d at 417. And in *Stafford* v. *Pabco Products and United States, Intervenor* (Superior Court of New Jersey, Appellate Division, Docket No. A–582–57, dated December 29, 1959; not yet reported), the court upheld an award in a workmen's compensation proceeding for VA hospital and medical costs, observing that there was no valid basis "for charging to the employer the cost of treatment given by state, county, municipal or private hospitals and at the same time holding it not responsible to a federal veteran's hospital." Cf. *Trustees of the State Hospital* v. *Lehigh Valley Coal Co.*, 267 Pa. 474; *Reichle* v. *Hazle*, 22 Cal. App. 2d 543.

2. The petitioner relies heavily on an asserted conflict between the decision of the California Industrial Accident Commission in this case and the decisions of this Court in *United States* v. *Standard Oil Co.*, 332 U.S. 301 and *United States* v. *Gilman*, 347 U.S. 507. In both *Standard Oil* and *Gilman*, this Court refused "to create a new substantive legal liability" where the Government, in *Standard Oil*, was suing in tort for losses occasioned by the injury to a soldier, and, in *Gilman*, was seeking indemnity from one of its civilian employees for whose negligence it was

held liable. In both cases, this Court ruled that in the absence of any existing common law or statutory remedy, and in view of the unique and special relationship under federal law of soldier or employee and the Government, it was for Congress to create the remedy sought by the Government. These decisions, however, in no way purported to affect the traditional right of the United States, as in the instant case, to avail itself of established, general remedies provided by state statute. Nor is there anything in the relationship between veteran and the federal Government, insofar as hospital care is concerned, that would justify reimbursement only on the basis of a federal statute.

The petitioner's reliance on the decision of the Court of Appeals for the Eighth Circuit in *United States* v. *St. Paul Mercury Indemnity Co.*, 238 F. 2d 594, is equally unfounded. The crucial distinction is that *St. Paul*, based primarily on the effect of the assignment to the VA, did not involve liability for hospitalization and medical care of an employer under workmen's compensation legislation, but rather liability of an insurer under a poliomyelitis policy insuring for "expenses actually incurred". The insured, a veteran, entered a veterans hospital for treatment of poliomyelitis and assigned all entitlement to benefits to the VA. In the Government's action against the insurer, the court ruled that the parties were bound by the language of the insurance policy and that since the insured had not, under 38 U.S.C. 706, sustained "actual expenses", the assignment to the VA gave VA nothing and therefore was ineffec-

tive to establish recovery under the policy. Here, as noted above, we are not concerned with the effect of an assignment under an insurance policy clause, but only with the nature of an employer's liability to one who provides needed treatment for the injured employee under workmen's compensation legislation.

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be denied.

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